

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

RSA No.300 of 2001 (O & M)
Date of decision: 15.07.2011

Naranjan Dass

Versus

.. Appellant

Gurmukh Dass and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA.

Present:- Mr.Ashish Gupta, Advocate,
for Mr.Vikram Singh, Advocate,
for the appellant.

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KANWALJIT SINGH AHLUWALIA, J. (ORAL)

This is regular second appeal filed by the plaintiff against the judgment and decree of the trial Court dated 07.06.2008 and the judgment and decree of the Appellate Court dated 01.06.2009.

The plaintiff filed a suit for declaration with a prayer that the judgment and decree passed by the Sub Judge, Kaithal on 10th December, 1994 in Civil Suit No.790 of 1994, be declared as illegal, null and void and not binding upon the rights of the plaintiff.

Defendant No.1 to the suit is the real brother of the plaintiff and defendant No.2 is the wife of defendant No.1. It was pleaded in the suit that the plaintiff had full faith in his real brother and his brother's wife (Bhabhi). Both the defendants on the basis of false and fabricated facts alleged that an oral/mutual family settlement dated 15.11.1993 was arrived at between the parties. Further, defendant No.1 had filed a Civil Suit No. 790 of 1994 against the plaintiff wherein he sought a decree for declaration to the effect that Smt.Sudesh Rani-defendant No.2 was already

in the possession of the suit land on the basis of oral/mutual family settlement. It is stated that the plaintiff is a simpleton, illiterate person and issueless. Therefore, a fraud has been played upon him.

Upon issuance of notice of motion, defendants appeared and denied the pleadings made in the plaint. They further raised preliminary objection regarding the maintainability of the suit. After framing of the issues by the trial Court, the parties led their evidence.

The trial Court held that the documentary evidence leaves no manner of doubt that the plaintiff appeared in the Court in Civil Suit No.790 of 1994. The plaintiff suffered a statement (Ex.P-3) in the Court and he was duly identified by Mr.C.L. Uppal, Advocate. Further, written statement (Ex.P-6) was also filed on behalf of the appellant-plaintiff. Therefore, the trial Court had rightly decreed the suit No.790 of 1994 filed by defendant No.1.

It was held by the Lower Appellate Court that said oral/family settlement is not a forged one. The Court took into consideration the fact that the plaintiff-appellant had suffered a statement (Ex.P-3) in the Court and that he was identified by the counsel and a written statement (Ex.P-6) was also filed on his behalf, therefore, the plea of fraud is not acceptable.

The concurrent findings of the Courts below are assailed on the ground that DW-1 Gurmukh Dass has admitted that the fraud was played upon the plaintiff. The Courts below have ignored this part of admission on the ground that parties are closely related and they now intend to avoid decree. Much emphasis has been laid on Para 21 of the judgment of Lower Appellate Court. The Courts while appreciating evidence not only take oral testimony but also accompanying circumstances. Fact that the plaintiff has himself appeared in earlier suit, was identified by his counsel, is sufficient to negate the plea of fraud and

discard the testimony of DW-1 Gurmukh Dass on this ground.

In view of the concurrent findings of fact recorded by both the Courts below there is no scope for re-appreciation of the findings and no substantial question of law arises for consideration of this Court.

Dismissed.

CM No.827-C of 2011

In view of the dismissal of appeal on merits, no orders are called for in the present application and the same stands disposed of.

July 15, 2011
sukhpreet

(Kanwaljit Singh Ahluwalia)
Judge